

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
Western Division

WELLS FARGO HOME MORTGAGE,

Plaintiff,

vs.

No.: 2:13-cv-2933-SHL-cgc

**JOHN BULLOCK d/b/a JOHN MEBRATU
ABYSSINIA BEY,**

Defendant.

REPORT AND RECOMMENDATION

Before the Court, by way of Order of Reference (D.E. # 19), is Defendant's December 19, 2014 Motion for Leave to Appeal *In Forma Pauperis*¹. (D.E. # 17). On December 5, 2014, District Judge Sheryl H. Lipman entered an Order remanding the instant case to the Shelby County General Sessions Court for lack of subject-matter jurisdiction. (D.E. # 14) Specifically, the District Court found that "there is not a federal question and Defendant has not met the amount-in-controversy requirement under 28 U.S.C. § 1332."

The United States Court of Appeals for the Sixth Circuit requires that all district courts in the circuit determine, in all cases where the appellant seeks to proceed *in forma pauperis*, whether the appeal would be frivolous. Twenty-eight U.S.C. § 1915(a)(3) provides that "[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith."

The good faith standard is an objective one. Coppedge v. United States, 369 U.S. 438, 445 (1962). The test under 28 U.S.C. § 1915(a) for whether an appeal is taken in good faith is

¹ The docket reflects that the Defendant did not pursue the instant case *in forma pauperis* and paid the \$400 case initiation fee. (D.E. # 2)

whether the litigant seeks appellate review of any issue that is not frivolous. Id. Twenty-eight U.S.C. § 1447(d) provides that “(an) order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise.” Not only was Defendant’s attempt to lodge the instant case in this court frivolous, any appeal from the District Court’s Order of Remand is clearly frivolous in light of the clear language of the statute.

It is therefore RECOMMENDED that the Court CERTIFY, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal in this matter by Defendant would not be taken in good faith and that Defendant’s Motion to proceed on appeal *in forma pauperis* be DENIED.

Signed this 29th day of December, 2014.

s/ Charmiane G. Claxton
CHARMIANE G. CLAXTON
UNITED STATES MAGISTRATE JUDGE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.